Advanced Small Business Workshop

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Workshop Topics

I. **Resolve Issues**
II. **Debriefing**
III. **Protest – FAR 33**
IV. **Alternative Dispute Resolution (ADR)**
V. **Small Business Market Basket Program**

I. Resolving Issues

- **It is imperative to act quickly**
- **Raise issue(s) with Contract Specialist and/or Contracting Officer**
- **Request a debriefing in writing**
- **Contact agency Small Business Office**
- **Contact Procurement Branch Chief and/or Product Center Leader**
- **Delay can mean that you loose your rights to be heard concerning ones issue(s)**
- **Try to resolve issue(s) at the lowest level**

II. Debriefing Procedures

1. **Debriefing definition**
2. **Timing & Conduct of Debriefing**
3. **Required Debriefing**
4. **What is a Required Debriefing**
5. **When is a Required Debriefing Provided**
6. **When is a Required Debriefing Concluded**
7. **Freedom of Information Act (FOIA)**
8. **Pre-award Debriefing**
9. **Post Award Debriefing**

Debriefing Definition
-1-

- **Government's assessment of a contractor's proposal in relationship to the evaluation criteria and an understanding of the basis for the award decision**

Timing & Conduct of Debriefing -2-

- **Debriefing is contractor's opportunity to learn why it didn't receive an award**
- **Objective is explain the award decision**
- **Not opportunity to correct inadequacies/deficiencies**
- **May be orally, in writing, or any method acceptable to CO – no specific legal requirement to do face to face**
- **CO could send debriefing via written fax or telephone**
- **CO required to maintain official summary of debriefing in file**
- **Not applicable to sealed bids, applies to negotiated procurements only**

Required Debriefing
-3-

- **First Agency must notify a firm that they have been excluded from competitive range or were not selected for award**
- **Debriefings are either “required” or merely one that an Agency is voluntarily providing**
- **If debriefing is not “required” – protest must be filed w/in 10 days from award or when firm should have known the basis for protest**

What is a Required Debriefing -4-

- **Only if submitted in writing to agency w/in 3 days after receipt of exclusion from competitive range or after receiving notice of award from firms who submitted proposal can request**
- **Counting 3 days, day the notice was received is not counted as first day (FAR 33.101)**
- **Proof of Timely Request for Debriefing**
  - **fax transmission**
  - **return receipt requested**
  - **dated e-mail**

When is a Required Debriefing Provided -5-

- **Government is to provide debriefing to the "maximum extent practical" w/in 5 days of receiving written request**
- **Once required debriefing has been provided, firm has no more than 10 days to file timely protest w/GAO**
- **Protest w/in 5 days of required debriefing can result in automatic suspension of contract performance**

When is a Required Debriefing Concluded -6-

- **Debriefing concluded upon Agency providing responses to relevant questions posed by firm regarding source selection & applicable regulations**
- **There is no clear standard or practical methods for determining whether questions are relevant or responses are reasonable**
- **These issues are resolved case by case**
- **CO may elect to get list of written questions from requester prior to debriefing**

Freedom of Information Act (FOIA)
-7-

- **FOIA request is <u>not</u> necessarily a written request for debriefing**
- **GAO does <u>not</u> consider a written request for copy of abstract(s) of offers a request for debriefing**

Pre-Award Debriefing
-8-

- **One should not have same expectations regarding release of information at this stage of a project**
- **One can not expect to find out:**
  - **number & identify of other firms**
  - **content, evaluation, & ranking of any firms**
- **All that can be disclosed at this time is:**
  - **evaluation of significant elements of proposal**
  - **summary of rational of exclusion**
  - **responses to relevant questions**
- **FAR does not address time table for providing pre-award debriefings – CO can delay until after award, but no later than 5 days after award**
- **Unsuccessful offeror is entitled to only one debriefing**

Post-Award Debriefing
-9-

- **Any firm retained in competitive range has right to a post-award debriefing, provided the firm submits a timely written request**
- **Upon request, debriefing date must be offered & conveyed by agency**
- **Agency must provide:**
  - **discuss significant weakness or deficiencies**
  - **evaluated price/cost including unit price(s)**
  - **technical rating of debriefed firm & awardee**
  - **if ranking developed, overall ranking of offeror**
  - **summary of rational for award**

more next slide

Post Award Debriefing Cont.
-9-

- Commercial items (make & model)

- Reasonable responses to relevant questions about source selection procedures & applicable regulation were followed

- **Firms should not expect:**

- point by point comparison

- names of individuals providing references

- information that is exempt, such as:trade secrets, confidential mfging. process, financial information(indirect costs, OHs, profits, etc.

Debriefing Concluded

- **Note: expectations that debriefing will provide the requester with a meaningful insight as to why the <u>competitors</u> proposal was deemed technically superior is misplaced**
- **This is not a comparison of proposals**

III. Protest - FAR 33

- **Types of Protest**
  1. **Agency Protest**
  2. **General Accounting Office Protest – GAO**
  3. **Court of Federal Claims**

- **see FAR 19.302 for protest of SB status and**
  FAR 19.305 for protest of SDB status

Protest to Agency - FAR 33.103

- **Protest must contain the following or Agency may dismiss protest:**
  1. **Name, address, fax/phone numbers**
  2. **Solicitation or contract number**
  3. **Detailed statement of legal & factual grounds for protest**
  4. **Copies of relevant documents**
  5. **Request for a ruling by Agency (either by CO or level above CO**
  6. **Form of relief requested**
  7. **Establish that protester is an interested party**
  8. **Establish timeliness of protest**

Protest to Agency Cont.

- **All protest filed directly w/Agency will be addressed to CO**

- **In order to obtain an independent review of protest at a level above CO, one must reference Executive Order 12979 & specifically request a decision at a level above CO**

  - **This allows use of alternative disputes resolutions techniques, 3rd party neutral, or another Agency personnel**

Protest to Agency Cont.

- **Timing for filing of Protest**
  - **Protest against solicitation based on alleged apparent improprieties shall be filed before the closing date for receipt of proposal (RFP) or bid opening (IFB)**
  - **All other cases, protest shall be filed no later than 10 days from when basis for protest is known or should have been known**
  - **W/in 5 days after debriefing date (see FAR 15.505 or 15.506)**
  - **Subsequent protest to GAO must be filed w/in 10 days of knowledge of initial adverse agency action**

Protest to GAO - FAR 33.104

- **All the same information must be provided to GAO as in Agency protest plus protester must provide a complete protest copy to Agency not later than 1 day after filing w/GAO or GAO may dismiss protest**
- **Hearings – GAO my hold a hearing at the request of Agency, protester, or other interested party**
- **GAO – decision time**
  - **100 days from filing date**
  - **65 days under express option**

GAO – Protest
Cont.

- **Address GAO protest to:**

  General Counsel

  General Accounting Office

  ATTN: Procurement Law Control Group

  441 G Street NW

  Washington, DC 20548

- **www.gao.gov - look for protest**
- **FAR 52.233-2, Service of Protest – expected to exceed $100K**
- **FAR 52.233-3, Protest after Award**

IV. Alternative Disputes Resolution (ADR) FAR 33.214

- **May be used in any dispute**
- **May be initiated by protester or agency**
- **Objective: increase opportunity of resolving issues expeditiously & inexpensively**
- **Essential Elements:**
  - **Issue in controversy**
  - **Participation is voluntary for both parties**
  - **Agreement on procedures & terms to be used in lieu of formal litigation**
  - **Both part officials have authority to resolve issue(s)**

IV. ADR Cont.

- **Rejecting ADR by either party shall be in writing, explaining specific reasons for rejection of ADR**
- **Binding Arbitration may be agreed to only as specified in Agency guidelines**

V. Small Business Market Basket Program

- **LTCs – base of 24 months w/3 12 month options**
- **Large quantity of NSNs (25 – 100)**
- **Line by line evaluation (not all or none)**
- **Grouped either by like FSCs or like manufacturing**
- **Major Terms & Conditions**
  - **Time to submit a proposal**
  - **Estimated Annual Demands vs. Minimum Order Qty.**
  - **Contract Guarantee Minimum**
  - **FAR Clause 52.216-19, Order Limitation (I-67)**
  - **Production Lead Times (PLT)**
  - **FOB Destination – all stock locations**
  - **Pricing zero demands**
  - **TDMD (Technical Data Management Division)**
  - **Surge & Sustainment**

V. Small Business Market Basket Program Cont.

- **Most all MBs are SB SAs**
- **Can be found:**
  - **Fed Biz Opps.**
  - **Procurement Gateway**
  - **DSCR's Business Opportunity page:**
    - **Small Business Acquisitions –**
    - **Small Business Reference Desk**
    - **Corporate Contracting/ Special Acquisition Opportunities**

V. Small Business Market Basket Program Cont.

- **MB Statistics:**

	# of Sol	# of NSNs	Est. Value (mills)
FY-03	35	3911	$116.0
FY-04	61	2705	120.3

	SB SA	HUBZ	8A
FY-03	23 - $ 64.26	- $31.0	6 - $20.7
FY-04	45 - 100.011	– 16.4	5 – 2.7

- **Live demonstration of MBs if time permits**

Thank You – Are there any questions